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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 344

ATLANTIC COAST LINE RAILROAD COMPANY, *Appellant,*

versus

STATE OF FLORIDA AND E. S. MATTHEWS, MAMIE EATON-GREENE, AND W. B. DOUGLASS, AS AND CONSTITUTING THE FLORIDA RAILROAD COMMISSION; BROOKS-SCANLON CORPORATION; CUMMER CYPRESS COMPANY; WILSON CYPRESS COMPANY; WILSON LUMBER COMPANY, OF FLORIDA; AND E. S. MATTHEWS, MAMIE EATON-GREENE AND W. B. DOUGLASS, AS AND CONSTITUTING THE FLORIDA RAILROAD COMMISSION, FOR THE USE AND BENEFIT OF THE SEVERAL SHIPPERS NAMED IN PARAGRAPH III OF THE FINAL DECREE OF RESTITUTION, *Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

STATEMENT BY APPELLANT OF THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES TO REVIEW UPON APPEAL THE ABOVE ENTITLED CONSOLIDATED CAUSE.

(a) The Statutory Provisions Sustaining the Jurisdiction.

Appellant relies upon Section 238 of the Judicial Code as amended by the Act of Congress of February 13, 1925

(Chapter 229, 43 Stat. 938, 28 U. S. C. A. 345), and also the Urgent Deficiencies Act of October 22, 1913 (Chapter 32, 38 Stat. 219, 220, 28 U. S. C. A. 47a), as sustaining the jurisdiction of the Supreme Court of the United States to review the above entitled consolidated cause upon appeal.

(b) The Decree Sought to be Reviewed.

The decree appealed from is dated April 14, 1934, and entered of record April 17, 1934. The petition for appeal is presented May 19th, 1934.

(c) Nature of the Case and of the Rulings of the Court.

The three constituent bills in this cause were separately instituted for the purpose of enjoining, setting aside and annulling an order of the Interstate Commerce Commission dated and filed August 2, 1928, and thereafter amended in certain particulars, in a certain proceeding had before said Interstate Commerce Commission entitled in its Docket No. 18364, Georgia Public Service Commission, complainant, *versus* Atlantic Coast Line Railroad Company, defendant (reported in 146 I. C. C. 717), which said order required the said Railroad Company to establish, put in force and maintain in intrastate commerce within and throughout the State of Florida certain rates for the transportation of logs.

These bills were filed for the purpose of attacking said order of August 2, 1928, as amended by order of February 7, 1929, of said Interstate Commerce Commission, and were duly heard before the specially constituted District Court comprised of Circuit Judge Walker, and District Judges Dawkins and Sibley. After the filing of said bills, appearance by parties defendant and intervenors, a hearing was had thereon and said judges comprising said trial court concurred in an unanimous opinion and on January 17, 1929, made and entered a decree (State of Florida *v.*

United States, 30 F. (2d) 116). Thereafter on petition to rehear, a final decree was entered and filed April 22, 1929, by which said trial court, pursuant to its opinion, sustained the order of the Interstate Commerce Commission, dated August 2, 1928, as amended February 7, 1929, and denied the relief sought in said three bills of complaint (State of Florida *v.* United States, 31 F. (2d) 580).

Complainants prosecuted their appeal in the Supreme Court of the United States, which on January 5, 1931, reversed the judgment and decree of the District Court (State of Florida *v.* United States, 282 U. S. 194).

Complainants filed motions to enter the mandate and as well to grant restitution to them by reason of the erroneous refusal of the District Court to enjoin the orders of the Interstate Commerce Commission in the first instance.

On March 7, 1931, the District Court ordered that the mandate be filed and made the judgment of that court and further ordered that the part of the order of the Interstate Commerce Commission under review be enjoined, set aside and annulled.

The motions by the several appellees for restitution were resisted by the Atlantic Coast Line Railroad Company, the appellant in this proceeding. On July 31, 1931, the District Court entered an order referring said claims for restitution to a special master and directed him

> "to ascertain and report to this Court the sums severally due to the complainants or other persons represented by the Florida Railroad Commission in this suit by the Atlantic Coast Line Railroad Company as overcharges exacted between said dates by virtue of the said invalid order of the Interstate Commerce Commission, as measured by the difference between the amount collected and the established lawful rate in force at the time each shipment was made, as the Master may find it to have been."

Appellees asserted that the "established lawful rate" referred to was the Florida State rate, commonly called the Cummer scale. The Master found that said Cummer scale of rates was unjust, unreasonable, and confiscatory during the period involved, to-wit, February 8, 1929-April 10, 1931, and that no findings could be maintained for the appellees. On exceptions the court unanimously sustained the finding of the Master that the Cummer scale of rates was unjust, unreasonable and confiscatory and a majority of the court re-referred said cause to the Master, holding:

> "Under the special circumstances of this case we adjudge that the claimants of restitution should have the same only upon condition that they submit to an investigation of the true rights of the carrier to collect for the transportation of their logs during the period covered by the restitution, and submit to such an adjudication as will justly and finally settle the accounts between such claimants and the carrier. To this end we recommit this matter to the master, with direction that he ascertain whether the charge made by the carrier for transportation in each instance was a reasonable one as measured by common law standard, and if not, what was the reasonable charge to be made, and that he measure and award to each claimant restitution accordingly."

Upon such re-reference the Master found appellees were entitled to receive thirty-four per centum of the amount claimed by them as restitution, which aggregated $99,941.78 principal with interest at eight per centum per annum from dates of payment. The District Court on exceptions to the Master's second report overruled the exceptions of appellees as well as those of this appellant, and confirmed the Master's finding by a final decree dated April 14, 1934, entered and filed April 17, 1934, whereby appellees were adjudged to be entitled to recover against the Atlantic Coast Line Railroad Company, this appellant, $99,941.78

principal, $33,112.78 interest to April 14, 1934, with future interest on said principal sum from April 14, 1934, at six per centum per annum.

(d) Cases Sustaining Jurisdiction.

Florida v. *United States*, 282 U. S. 194;
Baltimore & Ohio Rd. Co. v. *United States*, 279 U. S. 781;
Arkadelphia Milling Co. v. *St. Louis, S. W. Rd. Co.*, 249 U. S. 134.

Respectfully submitted,

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